

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This SETTLEMENT AGREEMENT and MUTUAL RELEASE (“Agreement”) is made and entered into as of October 20, 2020 (the “Effective Date”) by and between Plaintiff Colonies Partners, L.P., a California Limited Partnership (“Colonies”), Plaintiff Jeffrey Burum (“Burum”; collectively with Colonies, “Plaintiffs”), and Defendant County of San Bernardino (“County”); Defendant San Bernardino County Flood Control District (“District”); Defendant Michael A. Ramos, in his individual capacity (“Ramos”); Defendant James Hackleman, in his individual capacity (“Hackleman”); Defendant Hollis “Bud” Randles, in his individual capacity (“Randles”); and Defendant Robert Schreiber, in his individual capacity (“Schreiber”; collectively with the aforementioned defendants, “County Defendants”). Burum, Colonies, County, District, Ramos, Hackleman, Randles, and Schreiber shall each be referred to as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, on March 1, 2018, Colonies filed an action against the Defendants entitled *Colonies Partners, L.P. v. County of San Bernardino, et al.*, United States District Court Case No.: 5-18-cv-00420-JGB (SHKx) (the “Colonies Case”), and filed its First Amended Complaint on July 25, 2018, which is the operative complaint in the Colonies Case;

WHEREAS, on April 2, 2018, Burum filed an action against the County Defendants entitled *Jeffrey Burum v. County of San Bernardino, et al.*, United States District Court Case No.: 5-18-cv-00672-JGB (SHKx) (the “Burum Case”), and filed his Second Amended Complaint on July 25, 2018, which is the operative complaint in the Burum Case;

WHEREAS, as set forth in its First Amended Complaint, Colonies alleged a First Amendment retaliation claim against Ramos, Hackleman, Randles, and Schreiber; a *Monell* claim against the County; a supervisory liability claim against Ramos and Hackleman; a conspiracy claim against Ramos, Hackleman, Randles, and Schreiber; and a breach of contract claim against the District;

WHEREAS, the County Defendants filed Answers on or about August 15, 2018 in which they denied the material allegations of the Colonies Case and the Burum Case, and contended that Colonies and Burum suffered no damage as a result of any wrongful conduct of any of the County Defendants;

WHEREAS, Colonies claims that as a result of the allegedly retaliatory investigation and prosecution, it suffered loss of capital and lost income;

WHEREAS, as set forth in his Second Amended Complaint, Burum alleged a First Amendment retaliation claim against Ramos, Hackleman, Randles, and Schreiber; a malicious prosecution claim against Randles and Schreiber; a fabrication of evidence claim against Randles and Schreiber; a *Monell* claim against the County; a supervisory liability claim against Ramos and Hackleman; and a conspiracy claim against Ramos, Hackleman, Randles, and Schreiber;

WHEREAS, Burum claims that as a result of the allegedly retaliatory investigation and prosecution, his personal and professional reputation were irreparably damaged, resulting in lost

business opportunities, lost capital and lost income;

WHEREAS, Burum claims that as a result of the allegedly retaliatory investigation, arrest, incarceration and prosecution, during which he was characterized as a criminal in his community for nearly a decade, he suffered physical sickness and related emotional distress;

WHEREAS, on September 17, 2018, United States District Judge Jesus G. Bernal consolidated the Colonies Case and Burum Case into *Colonies Partners, L.P. v. County of San Bernardino, et al.*, United States District Court Case No.: 5-18-cv-00420-JGB-SHKx (Dkt. No. 82);

WHEREAS, on February 27, 2020, United States Magistrate Judge Shashi H. Kewalramani filed a Report and Recommendation on Colonies and Burum's Motion for Sanctions, recommending that Judge Bernal (1) order that an adverse inference instruction against Ramos and the County be given to the jury should the Colonies Case and the Burum Case proceed to trial, and (2) award Colonies and Burum the fees they incurred in bringing their Motion for Sanctions, which Judge Bernal adopted in its entirety on March 27, 2020;

WHEREAS, on April 10, 2020, Colonies and Burum submitted a fee declaration pursuant to Judge Bernal's March 27, 2020 order, seeking a monetary sanction in the amount of Forty Two Thousand Five Hundred Eighty-Nine Dollars (\$42,589.00) ("Spoliation Monetary Sanction");

WHEREAS, on July 28, 2020, Judge Bernal issued an order on motions for summary judgment brought by Ramos, Hackleman, Randles, Schreiber, and the County against Colonies and Burum ("MSJ Order"), in which he (1) granted Ramos's, Hackleman's and the County's motions as to Burum's negligence and intentional infliction of emotional distress claims, but denied Ramos's and Hackleman's motions in all other respects; (2) denied the County's motion as to Burum's and Colonies' Monell municipal liability claims; (3) granted the County's motion as to Colonies' conspiracy, breach of contract, and breach of the covenant of good faith and fair dealing claims; (4) denied Randles' and Schreiber's motions as to Burum's fabrication of evidence claim; and (5) granted Randles' and Schreiber's motions as to Colonies' and Burum's First Amendment retaliation and conspiracy claims, and as to Burum's negligence, intentional infliction of emotional distress, and malicious prosecution claim;

WHEREAS, on August 26, 2020, Ramos, Hackleman, Randles, and Schreiber (the "Individual County Defendants") filed notices of appeal following Judge Bernal's MSJ Order as to Colonies and Burum (Dkt. Nos. 413, 414), thereby initiating Ninth Circuit Case Nos. 20-55896 and 20-55898 (together with Plaintiffs' actions against Defendants, the "Pending Litigation");

WHEREAS, on October 20, 2020, following mediation with Hon. Louis M. Meisinger (Ret.) of Signature Resolution, and following Judge Meisinger's mediator's proposal, Plaintiffs and County Defendants reached agreement on the material terms of a settlement to fully and finally resolve all differences, rights, and obligations among them, arising out of or related to any and all known or unknown disputes and differences arising out of or relating to the Pending Litigation;

WHEREAS, Defendant Adam Aleman ("Aleman") subsequently agreed to also fully and finally resolve all differences, rights, and obligations between him and Plaintiffs, arising out of or

related to any and all known or unknown disputes and differences arising out of or relating to the Pending Litigation;

WHEREAS, the County Defendants enter into this Agreement due to the costs and uncertainties of litigation, and to fully and finally resolve all differences, rights, and obligations between the County Defendants and Plaintiffs arising out of or related to any and all known or unknown disputes and differences arising out of or relating to the Pending Litigation. Nothing contained in this Agreement, or the fact of it, should be construed as an admission of any kind or of any fault, wrongdoing, or liability of any of the County Defendants;

NOW, THEREFORE, in consideration of the covenants contained in this Agreement, and for other further good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, including the avoidance of further costs, inconvenience, and uncertainties, the Parties agree as follows:

AGREEMENT

The recitals above are incorporated herein, in their entirety, by this reference. The Parties hereby agree as follows:

1. Settlement Consideration

In full and final settlement:

1.1 Payment by the County: No later than January 18, 2021, but no earlier than January 1, 2021, the County shall pay to Plaintiffs the aggregate monetary sum of Sixty Five Million Dollars (\$65,000,000.00), via wire transfer to the Larson O'Brien LLP Client Trust Account, representing payment to Burum and Colonies as additional consideration for its distressed sales and all other damages, and to Burum on account of his incarceration, loss of personal and professional goodwill, lost sales proceeds, and all other damages. On or before January 1, 2021, Plaintiffs shall each provide a W-9 concerning the settlement payment.

1.2 Payment of Spoliation Monetary Sanction: No later than January 18, 2021, the County on its own behalf and on behalf of Ramos shall pay to Plaintiffs the Spoliation Monetary Sanction—\$42,589.00—via wire transfer or cashier's check to the Larson O'Brien LLP Client Trust Account.

1.3 Plaintiffs' Dismissal of Claim Against Defendants and Individual County Defendants' Dismissal of Appeals: The Parties will, no later than five (5) court days following the County making the payments pursuant to Paragraphs 1.1 and 1.2, take all necessary actions to initiate dismissal of the Pending Litigation with prejudice.

1.4 Judgment: Should the County request an entry of judgment, the other Parties shall cooperate in seeking entry of a judgment that simply states that judgment has been entered in favor of Plaintiffs and against the County in the amount of Sixty Five Million Forty Two Thousand Five Hundred Eighty Nine Dollars (\$65,042,589.00), and that the judgment, resulting from a compromise and settlement, shall not have collateral estoppel or issue preclusion effect as to any non-party and such further language as is required to effect that intent.

2. Mutual Releases

2.1 Mutual Releases: In consideration for their respective dismissals of the Pending Litigation, the County's payments to Plaintiffs, and the other consideration set forth herein, Plaintiffs on the one hand, and the County Defendants on the other hand, including said Parties' past and present parents, affiliates, successors, predecessors, subsidiaries, affiliated entities, heirs, descendants, dependents, assigns, executors, administrators, conservators, trusts, beneficiaries, agents, servants, employees, officers, directors, partners, owners, and representatives ("Releasers") irrevocably release, acquit, dismiss, and forever discharge the Parties on the other side, including said Parties' past and present parents, subsidiaries, affiliates, successors, predecessors, subsidiaries, affiliated entities, heirs, descendants, dependents, assigns, executors, administrators, conservators, trusts, beneficiaries, agents, servants, employees, officers, directors, partners, owners, representatives, and attorneys ("Releasees") from any and all past, present, and future claims, actions, demands, obligations, damages, injuries, losses, causes of action, remedies, costs, expenses, compensation, debts, liens, and liabilities of any kind or nature whatsoever, known or unknown, suspected or unsuspected, that Releasers have or may have against the Releasees on the other side, whether in law, equity or otherwise under the law of any state, federal, or other government, known or unknown, anticipated or unanticipated, including, but not limited to, those arising out of, relating to, or based upon the matters alleged, or that could have been alleged, in the Pending Litigation ("Released Claims"). For the purpose of implementing a full and complete release and discharge of each and all of the Released Claims, the Parties expressly acknowledge that this Agreement is intended to include and does include in its effect, without limitation, all claims which the Releasers do not know or suspect to exist in the Releasers' favor at the time the Parties signed this Agreement, and that this Agreement contemplates the extinguishment of all such claims, including, without limitation, those against R. Lewis Cope.

2.2 Release and Waiver of Rights Under Section 1542: The Parties to this Agreement further warrant, represent, and agree that they are fully aware of California Civil Code Section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Parties hereby waive and relinquish every right or benefit that they have or might have under Section 1542 to the fullest extent that they may lawfully waive such right or benefit with regard to the subject matter of this Agreement. In connection with such waiver and relinquishment, the Parties acknowledge that they are aware that they might later discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of this Agreement, but that it is their intention hereby fully, finally, and forever to settle and release all matters, known or unknown, suspected or unsuspected, which now exist, might exist, or previously existed, prior to and including the Effective Date between the Parties as set forth above. This Agreement is intended to be and is final and binding, regardless of any claims of

misrepresentation, concealment of fact, or mistake of law or fact, and shall be and remain in effect as a full and complete release of all such matters, notwithstanding the discovery or existence of any additional or different claims or facts relative thereto.

2.3 Covenant Not to Sue: The Parties covenant and agree that they will not make, assert, or maintain any claim, cross-claim, counterclaim, demand, action, or cause of action against each other based on any Released Claim. The Parties may, however, bring any claims necessary to enforce rights and/or obligations arising under this Agreement. Colonies and Burum covenant and agree that they will not make, assert, or maintain any claim, cross-claim, counterclaim, demand, action, or cause of action against R. Lewis Cope or Aleman arising out of or related to any and all known or unknown disputes and differences arising out of or relating to the Pending Litigation.

2.4 No Admission of Liability or Wrongdoing: Nothing herein shall constitute or be construed as an admission or concession by the Parties of: (i) liability of any nature; or (ii) the truth of any allegations made between the Parties, which the Parties expressly deny. Neither this Agreement nor the terms or contents thereof shall be admissible in any court, administrative proceeding, arbitration, or other dispute resolution proceeding except to the extent necessary to enforce the rights and/or obligations arising under this Agreement.

2.5 No Public Comments: The Parties agree that they will not make any public comments or statements to any media representative or outlet regarding this Agreement other than (1) the joint statement the Parties will issue regarding the resolution of this case, and (2) the following: "The parties mutually agreed to settle their dispute."

3. General Provisions

3.1 Attorneys' Fees and Costs: Each Party shall bear, and be responsible for the payment of, its/his own costs, expenses, and attorneys' fees incurred in connection with the Pending Litigation and/or the negotiation, preparation, execution, and implementation of this Agreement; provided, however, that in the event of an action to enforce this Agreement, the prevailing party shall be entitled to its/his reasonable attorneys' fees and costs in accordance with Paragraph 3.5 below.

3.2 Cooperation/Facilitation: The Parties agree to cooperate fully, to execute and deliver any and all supplementary documents, and to take all additional actions that reasonably may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement without the receipt of further consideration.

3.3 Successors and Assigns: This Agreement will be binding upon the Parties' successors, assigns, heirs, executors, administrators, and other legal representatives.

3.4 Governing Law: This Agreement and all disputes or controversies arising out of or relating to this Agreement shall be governed by, and construed in accordance with, the internal laws of the State of California, without regard to the laws of any other jurisdiction that might be applied because of the conflicts of laws principles of the State of California.

3.5 Dispute Resolution: Any dispute, claim, or controversy arising out of or relating to this Agreement, or the breach, termination, enforcement, interpretation, or validity thereof,

including the determination of the scope or applicability of this agreement to arbitrate, shall be resolved by a confidential arbitration in Los Angeles, California, with the Honorable (Ret.) Louis Meisinger of Signature Resolution presiding (unless he is unavailable to preside over the matter within two (2) months of a Party contacting Signature Resolution to initiate arbitration proceedings, in which case the parties shall agree upon another arbitrator or, if they cannot, abide by the Signature Resolution rules with respect to the appointment of another arbitrator), and in accordance with the Federal Arbitration Act and the rules of Signature Resolution in effect as of the Effective Date.

This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from any court of appropriate jurisdiction. Judgment on the arbitration award may be entered in any court having jurisdiction. The prevailing Party in any such arbitration shall be entitled to recover its attorneys' fees and costs.

3.6 Entire Agreement: This Agreement represents the entire agreement between the Parties regarding the matters set forth herein and supersedes all prior agreements and discussions. There are no warranties, representations, agreements, promises, or terms other than as set forth herein. The terms of this Agreement may be amended, waived, canceled, novated, or modified only by a writing signed by the Party against whom said amendment, waiver, cancellation, novation, or modification is asserted.

3.7 Construction: The Parties acknowledge that they were represented by independent and competent legal counsel in connection with the negotiation and drafting of this Agreement, and that this Agreement has been collectively and jointly drafted by the Parties. Consequently, the interpretation of this Agreement (or any specific provision herein) shall not be construed either for or against any particular Party based upon its status as the drafter of such provision.

3.8 Severability: In the event that any provision of this Agreement shall be found unenforceable by an arbitrator or court of competent jurisdiction, the provision shall be deemed modified to the extent necessary to allow enforceability of the provision as so limited, it being intended that the Parties shall receive the benefits contemplated herein to the fullest extent permitted by law. If a deemed modification is not satisfactory in the judgment of such arbitrator or court, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.

3.9 Use of This Agreement in Other Proceedings: This Agreement may be pleaded as a full and complete defense to any action, suit, or other proceeding that may be instituted or prosecuted based on the Released Claims and/or all other matters released pursuant to this Agreement. The Parties agree that any such proceeding would cause irreparable injury to the Party against whom it is brought and that any court of competent jurisdiction may enter an injunction restraining prosecution thereof. The Parties further agree that this Agreement may be pleaded as necessary for purposes of enforcing this Agreement in arbitration or in court and may be filed with the arbitrator or court for purposes reasonably related thereto.

3.10 Knowing and Voluntary Agreement: Each of the Parties has been advised by their respective counsel as to the terms of this Agreement and understands and knowingly and

voluntarily agrees to the terms of this Agreement without duress or influence by any other Party or any third person.

3.11 Survival: All of the representations, warranties, and covenants provided herein shall survive the date of this Agreement.

3.12 Counterparts and Signatures: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures transmitted by facsimile or email may be used and shall be binding on all Parties. This Agreement, regardless of whether it has original, facsimile, copy, or pdf signatures, shall be binding and enforceable upon the affixing of such signatures by the Parties to this Agreement.

3.13 Authority: Each Party represents and warrants that the natural person signing this Agreement on behalf of a Party represents and warrants that he or she has authority to execute this Agreement. Each Party further represents and warrants that this Agreement has been duly executed and appropriately authorized by all required governmental entities. Plaintiffs represent and warrant to the County Defendants that Plaintiffs (a) are the lawful owners of everything released by this Settlement Agreement, (b) have all necessary power and authority to make such release, including any necessary consent or approval from any person or entity and including the absence of any duty or obligation that would prevent, or be put in breach or default by, such release, and (c) have not heretofore transferred or attempted to transfer all or any part of any such thing released in any manner whatsoever, including by way of subrogation or operation of law.

3.14 Headings: Titles, headings, or captions herein are inserted as a matter of convenience, and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereof.

3.15 No Third-Party Beneficiary: This Agreement, and each and every term and provision in it, except with respect to Releasees, shall not inure to the benefit of any non-party, specifically, without limitation, any insurer of the County Defendants. The Parties do not intend in entering into this Agreement to benefit any such non-party.

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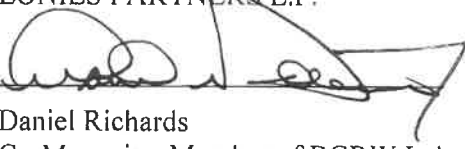
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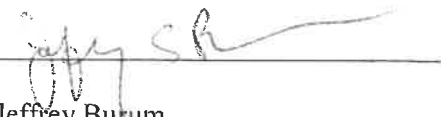
[Signatures on following pages.]

Dated: 11/18/2020

COLONIES PARTNERS L.P.

By: 


Daniel Richards
Co-Managing Member of BGRW Lakes, LLC, the
General Partner of Colonies Partners L.P.

By: 

Jeffrey Burum
Co-Managing Member of BGRW Lakes, LLC, the
General Partner of Colonies Partners L.P.

Dated: 11/18/2020

JEFFREY BURUM


Print Name: Jeffrey Burum

Dated: _____

COUNTY OF SAN BERNARDINO

By: _____

Name: Curt Hagman
Title: Chairman of the Board of Supervisors

Dated: _____

SAN BERNARDINO COUNTY FLOOD CONTROL
DISTRICT

By: _____

Name: Curt Hagman
Title: Chairman of the Board of Supervisors

Dated: _____

MICHAEL RAMOS

Print Name: _____

Dated: _____

JAMES HACKLEMAN

Print Name: _____

Dated: _____ COLONIES PARTNERS L.P.

By: _____

Daniel Richards
Co-Managing Member of BGRW Lakes, LLC, the
General Partner of Colonies Partners L.P.

By: _____

Jeffrey Burum
Co-Managing Member of BGRW Lakes, LLC, the
General Partner of Colonies Partners L.P.

Dated: _____ JEFFREY BURUM

Print Name: _____

Dated: 11-24-2020 _____ COUNTY OF SAN BERNARDINO

By: 

Name: Curt Hagman
Title: Chairman of the Board of Supervisors

Dated: 11-24-2020 _____ SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT

By: 

Name: Curt Hagman
Title: Chairman of the Board of Supervisors

Dated: _____ MICHAEL RAMOS

Print Name: _____

Dated: _____ JAMES HACKLEMAN

Print Name: _____

Dated: _____ COLONIES PARTNERS L.P.

By: _____

Daniel Richards
Co-Managing Member of BGRW Lakes, LLC, the
General Partner of Colonies Partners L.P.

By: _____

Jeffrey Burum
Co-Managing Member of BGRW Lakes, LLC, the
General Partner of Colonies Partners L.P.

Dated: _____ JEFFREY BURUM

Print Name: _____

Dated: _____ COUNTY OF SAN BERNARDINO

By: _____

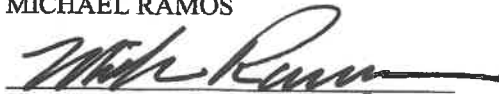
Name: Curt Hagman
Title: Chairman of the Board of Supervisors

Dated: _____ SAN BERNARDINO COUNTY FLOOD CONTROL
DISTRICT

By: _____

Name: Curt Hagman
Title: Chairman of the Board of Supervisors

Dated: 11-13-20 MICHAEL RAMOS



Print Name: Michael Ramos

Dated: _____ JAMES HACKLEMAN

Print Name: _____

Dated: _____ COLONIES PARTNERS L.P.

By: _____

Daniel Richards
Co-Managing Member of BGRW Lakes, LLC, the
General Partner of Colonies Partners L.P.

By: _____

Jeffrey Burum
Co-Managing Member of BGRW Lakes, LLC, the
General Partner of Colonies Partners L.P.

Dated: _____ JEFFREY BURUM

Print Name: _____

Dated: _____ COUNTY OF SAN BERNARDINO

By: _____

Name: Curt Hagman
Title: Chairman of the Board of Supervisors

Dated: _____ SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT

By: _____

Name: Curt Hagman
Title: Chairman of the Board of Supervisors

Dated: _____ MICHAEL RAMOS

Print Name: _____

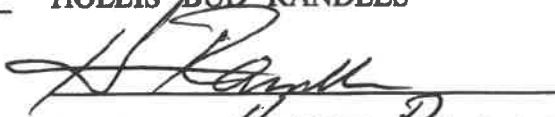
Dated: Nov 13, 2020 JAMES HACKLEMAN



Print Name: JAMES HACKLEMAN

Dated: Nov 13, 2020

HOLLIS "BUD" RANGLES



Print Name: HOLLIS RANGLES

Dated: _____

ROBERT SCHREIBER

Print Name: _____

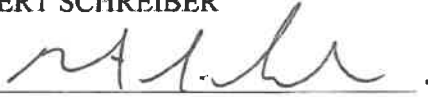
Dated: _____

HOLLIS "BUD" RANGLES

Print Name: _____

Dated: 11/16/2020

ROBERT SCHREIBER


Print Name: ROBERT SCHREIBER